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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/545,769	04/10/2000	William J Beyda	OOP7572US	2711

7590 10/28/2005  
Siemens Corporation  
Intellectual Property Department  
186 Wood Avenue South  
Iselin, NJ 08830

EXAMINER
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HOM, SHICK C

ART UNIT	PAPER NUMBER
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2666

DATE MAILED: 10/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/545,769

Applicant(s)

BEYDA ET AL.

Examiner

Shick C. Hom

Art Unit

2666

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4,5 and 9-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4,5 and 9-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments with respect to claims 4-5 and 9-17 have been considered but are moot in view of the new ground(s) of rejection.

### *Claim Objections*

2. Claims 4-5 and 9-17 are objected to because of the following informalities: in claims 4-5 and 9-17 delete capitalized "Ethernet-type," "Internet Protocol," "Quality of Service Ethernet," "Generate Quality of Service Ethernet," "Quality of Service," "Type of Service," "Ethernet Quality of Service," "Ethernet," "Differentiated Service" and replace with lower cased ---ethernet-type---, ---internet protocol---, ---quality of service ethernet---, ---generate quality of service Ethernet---, ---quality of service---, ---Type of Service---, ---ethernet quality of service---, ---ethernet---, ---differentiated service--- because they're not used as acronyms. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. Claims 4-5 and 9-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 4-5, 9-12, and 15, lines 9, 7, 2, 5, respectively, which recite "a second byte" is not clear because no first byte have been recited and therefore is not clear as to where is the first byte. Claims 13-14 and 16-17 are rejected under 35 U.S.C. 112, second paragraph because they depend from rejected claims 12 and 15, respectively.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 4-5 and 9-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Jorgensen (2002/009854).

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Regarding claims 4-5 and 9-17:

Jorgensen discloses a telecommunications system, comprising: an Ethernet type local area network; and one or more telecommunications devices coupled to said Ethernet-type local area network, said one or more telecommunications devices including: an Internet Protocol voice communication stack (see paragraphs 0002, 0008, and 0240 which recite the telecommunication networks including the voice, data, and video networks and the subscriber customer premise equipment stations coupled to the network using TCP/IP protocol clearly anticipate using the IP voice communication stack); a Quality of Service Ethernet layer; and a Generate Quality of Service Ethernet layer interposed between said Internet Protocol voice communication stack and said Quality of Service Ethernet layer and adapted to intercept a second byte in an IP header of an IP layer, identify from said second byte a quality of service required for individual calls, and generate corresponding Quality of Service commands to said Quality of Service Ethernet layer to define an Ethernet Quality of Service at an Ethernet layer; said second byte comprising a Type of Service byte (see Fig. 7, the IP packet header field including the IP type of service TOS field, and paragraphs 0127 and 0406 which recite identifying the

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quality of service QoS using the packet header field including the TOS field and the abstract and paragraph 0076 which recite allocating resources according to the defined QoS clearly anticipate generating Quality of Service commands to the Quality of Service Ethernet layer to define an Ethernet Quality of Service at an Ethernet layer); wherein said Quality of Service Ethernet layer and said Generate Quality of Service Ethernet layer are modular (see Fig. 4 and paragraph 0313 shows and recite the OSI 7 layer networking protocol stack standard being used to support QoS clearly anticipate the Quality of Service Ethernet layer and Generate Quality of Service Ethernet layer being modular) as in claims 4-5, 9-17; wherein said second byte comprising a Differentiated Service byte (see paragraph 0480 which recite the differentiated service field) as in claims 5, 10, 11, 14, 17; and including means for accessing a lookup table, said lookup table containing entries for mapping said second byte to QoS Ethernet quality of service commands (see paragraph 0489 which recite table lookup being performed to determine the packet QoS class depending on the QoS requirements for the packets) as in claims 12, 15.

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**Conclusion**

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Jin et al. disclose use of precedence bits for quality of service.

Borella et al. disclose a method for optimizing data transfer in a data network.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shick C. Hom whose telephone number is 571-272-3173. The examiner can normally be reached on Monday to Friday with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on 571-272-3174. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SH



DANG TON  
PRIMARY EXAMINER